

Message

From: John Ray [bodinman2003@yahoo.com]
Sent: 2/4/2019 3:25:04 PM
To: Benevento, Douglas [benevento.douglas@epa.gov]
Subject: Re: Where are we with the Butte Superfund Cleanup?--Although there is more to do, I think we are going in the right direction.

I am in my office at Montana Tech currently until 8:55.
After that I will be home after 2:30 PM.
My office phone at Tech is: 406 496 4228
My home phone is: 406 782 0681
Also, I would be happy to call you in between classes if you send me your phone number..
John Ray

On Monday, February 4, 2019 7:15 AM, "Benevento, Douglas" <benevento.douglas@epa.gov> wrote:

John, can I call you today? What's the best number to reach you at?

From: John Ray <bodinman2003@yahoo.com>
Sent: Sunday, February 3, 2019 3:50 PM
To: Benevento, Douglas <benevento.douglas@epa.gov>; Hestmark, Martin <Hestmark.Martin@epa.gov>; Wardell, Christopher <Wardell.Christopher@epa.gov>; Mutter, Andrew <mutter.andrew@epa.gov>; Bohan, Suzanne <bohan.suzanne@epa.gov>; Vranka, Joe <vranka.joe@epa.gov>; Greene, Nikia <Greene.Nikia@epa.gov>; Elsen, Henry <Elsen.Henry@epa.gov>; Archer, Allie <Archer.Allie@epa.gov>
Cc: Daryl Reed <dreed@mt.gov>; Karen Sullivan <ksullivan@bsb.mt.gov>; Karen Ogden <karen.ogden@mt.gov>; Eric Hassler (BSB) <ehassler@bsb.mt.gov>; Bryson, Josh <josh.bryson@bp.com>; Dave Bowers <dbowers@mt.gov>; jchambers@mt.gov; Loren D. Burmeister <loren.burmeister@bp.com>; Patricia A. Gallery <patricia.gallery@bp.com>; Cord Harris <cord.harris@bp.com>; jenni.harris@bp.com; Christina Perkins <christina.perkins@bp.com>; lindy.hanson@bp.com; Mick Ringsak <eltonringsak@aol.com>; Joe Griffin <jgriffin.redmountain@gmail.com>; Erik Nylund <erik_nylund@tester.senate.gov>; Dylan (Tester) Laslovich <dylan_laslovich@tester.senate.gov>; Sophie Miller <Sophie_Miller@daines.senate.gov>; Cindy (Daines) Perdue-Dolan <cpdolan@bsb.mt.gov>; Julia Crain <jcrain@bsb.mt.gov>; Mark Thompson <mthompson@montanaresources.com>; Ring Henry Tester <henry_ring@tester.senate.gov>; Dave Palmer <dpalmer@bsb.mt.gov>; Jon Sesso <jsezzo@bsb.mt.gov>; Jim Keane <d.keane@bresnan.net>; Cindi Shaw <wrocshaw@hotmail.com>; Bill Macgregor <billmacgregor46@gmail.com>; Thomas Stoops <tstoops@mt.gov>; smcgrath@mt.gov; Commissioners <commissioners@bsb.mt.gov>; Bill Andersen District Ten <woandersen@gmail.com>; Katie Hailer <khailer@mtech.edu>; David Hutchins <dthutchins@mtech.edu>; David Williams <toko.dave@gmail.com>; buttectec@hotmail.com; Elizabeth Erickson <eerickson@wet-llc.com>; John Ray <bodinman2003@yahoo.com>; Olivia Everett <olivia.m.m.everett@gmail.com>; Anna Chacko <chackorad@hotmail.com>; Partridge, Charles <Partridge.Charles@epa.gov>; Raja Nagisetty <rnagisetty@mtech.edu>; Alysia Cox <acox@mtech.edu>; Evan Barrett <evanbutte@bresnan.net>; Watters, Michelle <watters.michelle@epa.gov>; Jim Ford <jford@mt.gov>; Olivia Everett <imaginebutte@gmail.com>
Subject: Where are we with the Butte Superfund Cleanup?--Although there is more to do, I think we are going in the right direction.

Submitted by: Dr. John W. Ray

The time has come to think anew and act anew; we must disenthral ourselves.
Abraham Lincoln

Now that the government is open again, Superfund is once again in the forefront in Butte. A number of recent emails have questioned the efficacy and protectiveness of recent Superfund movement. Many repeat the same arguments attacking the cleanup. I think we are currently in a new period and that now would be a good time to take stock of where we are with the cleanup in Butte.

I remain optimistic that we are finally on the right track on many Superfund fronts in Butte.

I would contend that:

1. Given the constraints of Superfund law and the rules and regulations promulgated pursuant to that law, the current Conceptual Agreement/Consent Decree covering Silver Bow Creek is a very positive development for Butte and should be supported. It can be tweaked but it is good for Butte.
2. The Berkeley Pit remediation, given the hand that Butte was dealt after the pumps were shut off, is proceeding well and will be protective.
3. Three outstanding issues, from my perspective, are most important to address and have not been adequately addressed: *The Montana Pole Plant, the Butte Health Study and Westside Priority Soils.*

Current Conceptual Agreement/Consent Decree

Any evaluation of the cleanup in Butte must be conducted within the constraints of the provisions of Superfund law that binds the EPA. EPA decisions must conform to the law. EPA cannot require that the PRPs perform any actions that are not mandated under the law or pursuant to a mandate under the law. Superfund is not going to create an Elysian Fields in Butte. We need to remember that Superfund in Butte is designed to protect human health and the environment from the threats posed by past mining activity in Butte—period. Superfund is not a panacea. Also, Superfund is a litigious and adversarial process where the EPA enforces strict liability. Any decision EPA makes must be able to stand up in court if challenged. (Often, legal decisions or the outcomes of litigious processes are not perfect.) In short, EPA does not have a free hand to require anything that it thinks might be environmentally beneficial. Also, some environmental harms cannot be fixed or made completely whole. We must look to what can be the best practical outcome of Superfund in Butte.

We are finally seeing, after years of inertia, positive, forward movement on EPA's part to get the cleanup completed. Kudos to Doug Benevento, Andrew Mutter, Martin

Hestmark, Susan Bohan, Chris Wardell, Joe Vranka, Henry Elsen and Nikia Greene. We need to also thank Robert Moler for his past efforts in Butte as well as Sara Sparks. We need to move beyond the comfort of the inertia of the past and embrace the discomfort of change.

I have been a past persistent and vocal critic of much that EPA has done but now is the time to move on. I am not advocating that citizens cease careful oversight of EPA actions. Much remains to be done. But, good change is on the horizon. We can continue to express recalcitrant reticence or we can participate in the process and continue to improve it. We have seen with the Restore Our Creek group how positive input can productively influence the cleanup process.

The Conceptual Agreement/Consent decree is not perfect. It is a compromise and represents give and take and is the product of negotiations and bargaining. The old saying that the perfect must not be the enemy of the good applies here. The current Conceptual Agreement/Consent Decree is not a utopian solution. But, given the constraints under which decision makers operate, it is a very good decision that goes beyond the requirements of the law and provides significant added benefits and amenities to the Butte community.

Given these limitations and parameters, the current EPA proposal for Silver Bow Creek merits enlightened support. There is no way EPA, under Superfund law, can order ARCO to construct a free flowing Silver Bow Creek. The proposed remedy for Silver Bow Creek goes well beyond what EPA could order ARCO to do. There are provisions in the Consent Decree/Conceptual Agreement that go above and beyond Superfund law. If the parties do not reach agreement on the consent decree and EPA has to issue a "unilateral order" to get the work done, many positive amenities in the Consent Decree will be lost. This is not a threat; it is reality. The current conceptual agreement would allow for a free flowing creek in the future if funding for such a project could be found. But it is unrealistic to expect EPA to order ARCO to construct such a revitalized Creek.

It is unrealistic to expect ARCO to construct a free flowing Silver Bow Creek absent a legal mandate to do so. ARCO has gone beyond the requirements of Superfund in the past--the RMAP program in Butte. The amenities in the current conceptual plan for Silver Bow Creek go beyond the requirements of the law.

Certainly, citizens owe a deep debt of gratitude to the members of the Restore Our Creek Coalition. Their efforts were not in vain and they have moved the agencies to a much better cleanup of Silver Bow Creek. Their vision of a free flowing Silver Bow Creek may yet come to fruition. But, citizens need to identify other sources of funds to construct a revitalized creek. We need to look past the Consent Decree in order to make a free flowing Creek a reality. Trying to get EPA to order one now is "beating a dead horse."

As evidenced by the content of the present proposed Consent Decree and Conceptual Agreement, EPA has done a commendable job representing and promoting community concerns in the development of Creek remediation plans. True, I still think it would have been better to have included tailings removal (Parrott, etc.) along Silver Bow Creek under remediation and not restoration but the tailings are being removed and we must work with what we have. With that said, EPA has displayed a praiseworthy degree of listening to the public and having public input actually input the process.

ARCO and MRI have gone beyond the requirements of Superfund and, I believe, have made a good faith effort to provide a good cleanup for citizens of Butte.

In addition to the amenities in the proposed conceptual agreement for Silver Bow Creek, the proposal seriously addresses the major threat to the Creek, storm water runoff. The proposed catch basins will not be mosquito ponds as some have said. One need only look at other Superfund sites throughout the country to see that you can have effective storm water catch basins that are visually pleasing while being effective at capturing storm water runoff.

We all would like a restored Silver Bow Creek. It is just that Superfund is not available to achieve that purpose. Continuing efforts to insist that EPA order ARCO to provide a free flowing creek are counterproductive. I may be wrong and if others know of specific, concrete ways to get a free flowing creek, these individuals should put forward concrete proposals. I am sure the EPA would listen.

Berkeley Pit

The Berkeley Pit is another example of where we need to move on. Critics of the current proposed water treatment plan need to offer an alternative, not just criticism. Of course, the Pit is a testament to the efficacy of pollution prevention. Not every harm to the environment can be totally fixed. But no one can, for example, realistically advocate backfilling the Pit. The area cannot be returned to what it was like before the Pit. So, what needs to be done differently with regard to the current Pit remedy? MRI is starting a pilot project early to test the efficacy of the water treatment system before the critical water level is reached. The agencies are taking scaling seriously. Again I ask what can be done differently? Don't just bemoan the Pit, offer an alternative. Offer a solution that is practical not just histrionic criticism. Given the current existing condition, what, specifically needs to be done differently? I, as someone who has followed the Pit issues, would like to know. If there is something concrete and practical that the EPA has missed, for sure let us bring it forth. But simply bemoaning something that cannot be fixed is not very useful.

To me there are still significant problems that need to be addressed under Superfund in Butte:

The Montana Pole Plant

The current state proposal is to simply leave deadly dioxin on site with a cap. The threat from dioxin will remain in place for perpetuity. The state, contrary to past assurances, wants to abandon active biological treatment that reduces the toxicity, mobility and volume of dioxin in a permanent manner in favor of passive capping. Citizens need to demand that the proposed subpar cleanup by the state of Montana be thoroughly vetted through what is called a full ROD Amendment process. The ESD process is insufficient. The state has also failed to provide meaningful public involvement in decisions regarding the site. Fortunately, the EPA project manager for the site is committed and competent. Maybe EPA should take over the site. But my specific present proposal is to have a full ROD Amendment process which would totally “clear the air” on what the state has done and not done; on what should have been done and what has not been done.

The Butte Health Study

Citizens have a right to know whether or not Butte is a healthy place to live and work and whether or not Superfund has been effective in ameliorating the health threats posed by the toxics of concern in Butte. Recent peer reviewed studies have called into question the efficacy of the Butte cleanup. So far the response has been to simply ignore the conclusions of these studies and defend past, inadequate and incomplete health studies. We need answers. We need the agencies to think anew in addressing whether Butte is a healthy place to live and work. Also, the health studies must address environmental justice issues and look at the differential effects of exposure to the toxics on concern on low income citizens in Butte. The Health Study has to look at more than just lead exposure. The Health Study has to look at diseases in addition to cancer.

We need answers. My argument is that we need a comprehensive health study that looks at the health effects of all toxics of concern in Butte, that looks at diseases other than cancer and that looks at the differential effects that exposure to the toxics of concern have on low-income citizens in Butte.

Educational outreach about remaining safe in Butte’s environment should be continued by the EPA. Significant strides in this area have been made recently by EPA. The Butte Health Department has been very supportive.

If we find that the cleanup is not being as protective as necessary to protect human health, changes can then be made in the cleanup efforts. Maybe the action levels might need to be made more protective. Or we may discover that everything that can be done is being done to protect health. In any case, Butte citizens have a right to know.

The Flat

Superfund must be formally expanded to the Flat. The decision to stop at Front Street is arbitrary. Particular attention needs to be extended to the Greeley Neighborhood. The RMAP program should be officially and fully extended to the Flat.

Conclusion

Much progress has been made in cleaning up Butte under Superfund. Butte is a healthier place to live. Water quality has been seriously improved. The RMAP program is a nationally recognized success story. The BRES program is running well and the caps are being effectively monitored. I think environmental justice issues are being taken very seriously by EPA.

The proposed Consent Decree/ Conceptual Agreement builds on those past successes and merits our support. Critical scrutiny of agency action is a right and duty of citizenship. But, instead of resisting change, we should seek to embrace it and influence it to get an even better cleanup for Butte. Working together we can achieve a sound and protective cleanup of Butte. I will be happy to help in that endeavor in any way I can.